Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

LEE H. LOFTIN,
Petitioner

vs.

BARBARA SPRINGER LOFTIN
Respondent

On Petition For Writ of Certiorari
To The Alabama Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does Rule 32 of the Alabama Rules of Judicial Administration violate one's constitutional right to equal protection pursuant to the 14th Amendment of the U. S. Constitution and the Alabama Constitution, by underinclusion when providing a specific guideline and standardized method by which to compute monthly child support for only those families with combined gross monthly incomes between $550.00 and $10,000.00 yet excluding and failing to provide a specific guideline, standardized method or formula for determining child support for individuals whose combined gross monthly income exceeds $10,000.00?

LIST OF PARTIES

Lee H. Loftin - Petitioner

Barbara S. Loftin - Respondent

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PETITION FOR A WRIT OF CERTIORARI

Lee H. Loftin (hereinafter "Petitioner") respectfully petitions for a Writ of Certiorari to review the Alabama Supreme Court's decision and Order dated February 23, 2001 quashing a previously issued Writ of Certiorari to the Alabama Court of Civil Appeals and thereby denying Petitioner's Writ of Certiorari.

OPINIONS BELOW

The Certificate of Judgment of the Alabama Supreme Court issued without opinion is reprinted in Appendix A. The Certificate of Judgment of the Alabama Court of Civil Appeals is reprinted in Appendix B. The Order of the Alabama Supreme Court granting the Petition for Writ of Certiorari to the Alabama Court of Civil Appeals without oral argument is reprinted in Appendix C. The Notice from the Alabama Court of Civil Appeals overruling the Application for Rehearing is reprinted in Appendix D. The Judgment of the Alabama Court of Civil Appeals affirming the trial court's Order in the underlying litigation is reprinted in Appendix E. The Order of the Circuit Court of Tuscaloosa County, Alabama on the hearing on the Motion to Alter, Amend, or Vacate a prior Order is reprinted in Appendix F. The Order of Modification modifying the original Final Judgment from the trial court is reprinted in Appendix G. The original Final Judgment from the trial on the merits from the Circuit Court of Tuscaloosa County, Alabama is reprinted in Appendix H.

JURISDICTION

The Certificate of Judgment of the Alabama Supreme Court quashing a previously issued Writ of

Certiorari to the Alabama Court of Civil Appeals and thereby denying Petitioner's Writ of Certiorari was entered on February 23, 2001. (App. A). This Court has jurisdiction to review the Judgment of the Alabama Supreme Court by Writ of Certiorari pursuant to 28 U.S.C. § 1257 (a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the U. S. Constitution provides in pertinent part as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. ***No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;*** nor shall any State deprive any person of life, liberty, or property, without due process of law; ***nor deny to any person within its jurisdiction the equal protection of the laws.***"

STATEMENT OF THE CASE

Introduction. This case arises out of a divorce between Petitioner and Respondent wherein the Trial Court ultimately awarded significant assets to the Respondent, including various forms of alimony and property settlements. (App. H). The Trial Court also awarded custody of the parties' two minor children to Respondent with the requirement that Petitioner pay child support. (App. H). In awarding the child support, the Trial Court set the monthly payments at an arbitrary amount based purely on the Court's discretion. (App. H). The Trial Court was not able to utilize the mandatory, standardized calculated amounts for support provided in Rule 32 of the

Alabama Rules of Judicial Administration due to the fact that Rule 32 arbitrarily does not provide standardized monthly amounts for support when parties' combined gross monthly incomes exceed $10,000.00. The resulting monetary award of child support amounted to a substantial departure from the foundational principals behind the standardized guidelines established in Rule 32. In making such an arbitrary and unsubstantiated award, the Trial Court also departed from the constitutionally mandated guarantees of equal protection and due process.

Final Decree of Divorce. The Trial Court based its decision on ore tenus testimony of the parties and exhibits submitted. After consideration of the evidence Respondent was awarded immediate cash assets of approximately $283,320.00 and monthly periodic alimony payments over 11 years totaling $407,540.00 for a combined total of $692,860.00. Additionally, Respondent was awarded an arbitrary amount of child support from Petitioner for the two minor sons in the monthly amount of $2,988.00, or $35,865.00 annually, until the youngest minor child reached the age of majority, which amounted to a period of 125 months. Thus, the total child support award Petitioner was ordered to pay was $373,500.00. There were numerous other awards of monetary benefits not listed, which substantially increased the total amount of financial outlay from Petitioner. (App. H).

In addition to the arbitrary child support award, Petitioner was further ordered to continue to maintain two separate education trust funds with principal amounts of approximately $100,000.00 each. (App. H). These two separate education trusts were previously established for each of the two minor children to assist in paying for college tuition and expenses. The Trial Court subsequently modified the original Final Decree to allow the proceeds to be

utilized by the children for their current private school education as well as college tuition and expenses at a later time. (App. G).

The Decision of the Alabama Court of Civil Appeals. In his brief on appeal, as in all post trial motions, Petitioner argued that the award of child support was arbitrary in that child support was determined without the use of the standardized calculated amounts for support provided in Rule 32 of the Alabama Rules of Judicial Administration due to the fact that Rule 32 does not provide standardized monthly amounts for support when parties' combined gross monthly incomes exceed $10,000.00. (App. F). Petitioner argued this inequality created by the arbitrary failure of Rule 32 violated his right to equal protection. On September 17, 1999, the Court affirmed the Trial Court's Final Decree with no opinion, thereby failing to address the question of the violation of equal protection by the failure in Rule 32. (App. E).

The Decision of the Alabama Supreme Court. In his brief on appeal to the Alabama Supreme Court, Petitioner again raised the same issues as raised with the Court of Civil Appeals. The Court on February 17, 2000 initially granted Petitioner's Writ for Certiorari. (App. C). However, on February 23, 2001, the Court quashed the previously issued Writ and denied the petition. (App. A). Thus, leaving once again, the question of the violation of Petitioner's equal protection unresolved.

ARGUMENT FOR GRANTING THE WRIT

THE COURT SHOULD GRANT CERTIORARI TO ADDRESS A CASE OF FIRST IMPRESSION IN ALABAMA EXEMPLIFYING HOW THE UNDERINCLUSIVENESS OF RULE 32 OF THE ALABAMA RULES OF JUDICIAL ADMINISTRATION VIOLATES THE CONSTITUTIONALLY GUARANTEED RIGHT TO EQUAL PROTECTION OF PARENTS ORDERED TO PAY CHILD SUPPORT WHOSE MONTHLY INCOME EXCEEDS $10,000.00.

1. Rule 32 Was Created To Promote Equitable And Consistent Treatment Of Similarly Situated Persons When Awarding Child Support In All Cases Involving Child Support In Alabama.

Rule 32 of the Alabama Rules of Judicial Administration (hereinafter "Rule 32") was created and adopted in response to legislation enacted in Alabama in 1984 and 1988. (App. I). The Legislature recognized the obvious difficulties facing a trial court when attempting to fashion consistent child support awards for the myriad of cases tried in court each year. In each separate case, it is clear that while many if not all situations are different, there are numerous common factors in the expenses of families with children.

The Legislature, in an effort to assist trial courts in the calculation of child support, went to great lengths to establish a standardized guideline for the exclusive purpose of calculating child support. (App. I). The guidelines in Rule 32 were established in order to "provide an adequate standard support for children, subject to the ability of their parents to pay, and will make awards more equitable by ensuring more consistent treatment of persons in similar situations." (App. I).

The Committee relied on competent and nationally recognized economic models and data to create Rule 32. (App. I). The information utilized as a basis for Rule 32 was comprised of extensive economic research on the cost of supporting children at various income levels. (App. I). The Committee even went so far in its development of Rule 32 to adjust the national data to specifically address the difference between Alabama's income distribution and the U. S. income distribution. Thus, validating Rule 32 and its application in relation to child support awards. (App. I).

2. Alabama Trial Courts Must Apply Rule 32 Guidelines When Calculating Child Support.

The application of Rule 32 is mandatory in all actions filed after October 9, 1989. Thisltethwaite v. Thistlethwaite, 590 So.2d 317 (Ala. Civ. App. 1991). Thus, judges in Alabama are required to apply the guidelines in Rule 32 when awarding child support in domestic cases. The guidelines, given the thoroughness of information utilized in its compilation, create a rebuttable presumption of correctness in a child support award and are to be strictly adhered to in making such an award. Id.

In fact, a trial court may only deviate from the guidelines in Rule 32 in two limited and narrow instances. Those two instances being when the parties to an action have entered a fair, written agreement establishing a different amount of support and stating the reasons therefor, or upon a written finding on the record that application of the guidelines would be manifestly unjust or inequitable. Thistlethwaite, quoting Rule 32(A), A.R.J.A.

3. Rule 32 Is Unconstitutional Because It Is Underinclusive And Creates A Separate, Disadvantaged Class Of Parents When Seeking A Divorce Involving Child Support.

When utilizing Rule 32, it is readily apparent that the guidelines contained therein were designed to provide for two distinct needs; the legitimate economic needs of children and the need to treat similarly situated persons the same when awarding child support. When there is a case involving monthly incomes in the range of $550.00 and $10,000.00, trial court must apply Rule 32. In doing so, the parties under consideration are guaranteed they will be treated the same as all other parties in the State of Alabama who are being considered for child support awards. All persons who are similarly situated will receive the same child support result. This is one of the two fundamental premises of Rule 32; that no matter what county in Alabama you reside in, no matter what occupation you hold, no matter what your education level is, no matter what other contingency addresses any area of your life, you will be treated the same as someone else in the same or similar life situation as you regardless. As stated supra, the comments to Rule 32 expressly state this is one of the only two considerations which were given any concern in the creation of Rule 32. (App. I).

However, when creating Rule 32, there was no consideration given to providing protection to anyone whose combined monthly income happens to fall outside the guidelines. When attempting to determine a reasonable child support amount utilizing the guidelines in Rule 32, it quickly becomes apparent the guidelines address only those individuals whose combined monthly income is greater than $550.00 and less than $10,000.00. No portion of Rule 32 makes any provisions for those individuals whose monthly incomes fall outside the guidelines. Those who

happen to fall in this category outside the guidelines are offered no protection or consideration by Rule 32 as are those who fall inside the guidelines. Their fate is left solely up to the trial court.

In addition, Rule 32 provides a trial court with absolutely no assistance in crafting a child support award for those whose combined monthly income happens to fall outside the guidelines. The comments to Rule 32 suggest that a trial court issue an order to establish a minimum child support amount for combined monthly incomes less than $550.00 per month. The comments in no way provide assistance in how a court is to establish this minimum support amount. It is purely left to the discretion of the court.

Also left purely to the discretion of the trial court is the amount of child support to award in cases where the parties' combined gross monthly income exceeds $10,000.00. However, in this instance, rather than provide a guideline, or suggest setting a standard to assist in the calculation, Rule 32 prohibits the trial court from making the only common sense decision available. The comments to Rule 32 specifically state that in this instance, the trial court should not extrapolate the guidelines outward from the maximum $10,000.00, but should rather utilize its own discretion. (App. I). The comments offer no reasoning or justification for suggesting so, only the requirement that a trial court not do so.

This underinclusiveness or exclusion of those who fall in the categories outside the printed guidelines is violative of these individuals constitutional guarantee to equal protection. There is no question that uniform results are reached in every county across Alabama when the guidelines in Rule 32 are used in fashioning a child support award. Yet when the guidelines are not available, the awards are completely inconsistent, unequal, inequitable and unjust.

In a cursory review of numerous cases in

Alabama, it becomes glaringly apparent that trial courts are all over the scale when ordering child support without the benefit of the guidelines in Rule 32. The case of Wallace v. Wallace, 2000 WL 378159 (Ala. Civ. App. 2000), is a case similar to the Petitioner's in many instances, including the following: the Husband was a physician whose Wife had assisted him by working as a licensed physical therapist and supplementing the family income through the Husband's last year of medical school. The Husband eventually purchased an interest in an existing medical practice in Alabama and located the family there. At the time of the divorce, the Wife maintained her physical therapist license but had not worked in approximately 13 years. There were two minor children, both of whom attended a private school. The property settlement in the case was also similar in that substantial assets were awarded to the Wife from the Husband's estate. Wallace v. Wallace, 2000 WL 378159 (Ala. Civ. App. 2000)

In Wallace, the Court determined the Husband's annual income to be $500,000.00. This annual income placed the Husband outside the Rule 32 guidelines for the trial court's determination of child support. Using its discretion, the trial court awarded the Wife child support in the monthly amount of $2,500.00. Included in the trial court's consideration is assumedly the cost of the private school education, which would arguably reflect a significant need of the two children.

In the Petitioner's case, the trial court ordered a monthly child support award of $2,988.00. This is a 20% variation from the award in Wallace. What makes the awards even more inconsistent than the 20% variation is the fact that the Husband's income in Wallace was over two times that of the Petitioner's at the last consideration of child support. Additionally, unlike the Husband in Wallace, the Petitioner's two children have an education trust fund for each in the

separate approximate amounts of $100,000.00. The proceeds from these two trusts are to be utilized to pay for the private school tuition and expenses of the two children. (App. G). When considering these, the difference between the two awards takes on an even greater inconsistency.

Wallace is only one example of many where individuals with incomes outside the guidelines received extremely inconsistent child support awards when compared with others similarly situated, i.e. outside the guidelines of Rule 32. In Glazner v. Glazner, 2001 WL 498964 (Ala. Civ. App. 2001), only one party worked outside the home and the monthly income exceeded the guidelines of Rule 32. Competing expert testimony placed the Husbands monthly income between $18,916.00 and $31,053.00.

The trial court, when considering the reasonable needs of the two minor children and the Husband's monthly income, made an initial child support award of $2,500.00. After post-trial motions to modify the Final Decree, the trial court reduced the monthly child support award to $1,800.00, a $700.00 difference from its initial award. Given the similarities with the Petitioner's case, this again represents a grossly inconsistent result in that the child support award in Glazner represents a 40% difference, less than the child support award in the Petitioner's case.

4. Federal Sentencing Guidelines Properly Include Sentencing Guidelines For All Federal Crimes, Unlike The Arbitrary And Capricious Income Exclusion Or Underinclusion Contained In Rule 32.

Rule 32 guidelines are analogous to the Federal Sentencing Guidelines for crimes prosecuted in the federal system. From a review of the policy statement contained in the Federal Sentencing Guidelines, 18

U.S.C.S. Appx. §3 (2001), it is clear that equal protection of similarly situated individuals was one of the few foundational goals and considerations of the Sentencing Guidelines just at it was in Rule 32. (Appx. K).

It is undisputed from reviewing the Sentencing Guidelines that they apply in all federal crimes. These guidelines make provisions for sentencing in all crimes except those extremely few, rare crimes where there is little or no data to utilize in the development of a standard. 18 U.S.C.S. §5 (2001). Thus, it is guaranteed that when one is sentenced pursuant to the commission of a crime prosecuted in the federal system, an individual will be treated virtually the same as one similarly situated in the same system. (App. J, K).

In some cases the Sentencing Guidelines make allowances for rare and unusual instances which need specific attention. (App. J). The Sentencing Guidelines addresses such atypical situations by allowing the sentencing court to depart from the mandatory guidelines and sentence outside the prescribed range. In this case the court must specify on the record the reasons for the departure. 18 U.S.C.S. Appx. §2 (2001), citing 18 U.S.C. 3553(b). This creation of the reasons for departure on the record allows for the appropriate review of the departure from guidelines whenever challenged.

Much like the Sentencing Guidelines, the guidelines in Rule 32 also set a uniform standard for addressing child support awards in divorces. Rule 32 also allows for the deviation from the rule in two limited instances mentioned previously. The one instance most like the Sentencing Guidelines is where the trial court sets the award by utilizing the rule and determines, due to special circumstances, the award pursuant to Rule 32 would be unjust or inequitable. Thisltethwaite v. Thistlethwaite, 590 So.2d 317 (Ala. Civ. App. 1991). However, this can only be done after

a finding of such on the record, much like the Sentencing Guidelines. This also allows the trial court the opportunity to clearly establish the unjust or inequitable result in applying Rule 32 guidelines and substantiate its reasons for deviation. Thisltethwaite (Ala. Civ. App. 1991). This allows for the appropriate result should the deviation be challenged. Bennett v. Brainard, 623 So.2d 340 (Ala. Civ. App. 1993).

The above mentioned aspects of the Federal Sentencing Guidelines and Rule 32 guidelines are where the two end in similarity and diverge significantly. It is clear that the Sentencing Guidelines apply to all crimes in the federal system. However, in stark contrast, it is also plain to see that Rule 32 does not apply to all divorces involving child support in Alabama. (App. I). As discussed previously, Rule 32 applies only to a certain exclusive group of individuals, while unconstitutionally excluding another innocent group.

The Federal Sentencing Guidelines were created with the intention of treating similarly situated offenders the same or equally when in the federal criminal system. In doing so, they address all crimes, rather than a certain arbitrarily selected number of crimes or certain arbitrarily selected number of offenders. It can only be said that the drafters of the Sentencing Guidelines knew that undertaking such a project required the consideration of all offenders in all crimes, not only a randomly selected number of the same.

To have stopped short of the whole, and not embraced the entire federal criminal system, would have been unconstitutional. If the commission had only addressed a limited number of crimes rather than all in the system, they would have opened up a floodgate of constitutional federal litigation like never before. Such an action could not have been deemed constitutional or rationally related to any legitimate state interest as evidenced by the pure fact that a

guideline was devised to encompass the entire system.

Thus, the Federal Sentencing Guidelines, unlike Rule 32, properly address all crimes in the federal system, not just an arbitrarily determined, hand selected amount of crimes, thereby creating preferential treatment for some crimes while leaving other crimes outside the protection of the Sentencing Guidelines purely to the arbitrary discretion of a trial court.

5. Providing A Simple Formula At The End Of The Printed Guideline Amounts In Rule 32 Consistent With The Maximum Printed Child Support Increments Would Provide A Standard Formula To Address All Incomes That Exceed The Printed Guidelines And Avoid Future Unjust And Inconsistent Awards As In The Present Case.

Rule 32 establishes that the maximum monthly support amount for two children at $10,000.00 of combined monthly income is $1,542.00. (App. I.). In fact, from $9,000.00 to $10,000.00, the incremental increase in support for each $100.00 incremental increase in combined monthly income is $7.00. It would be entirely practical and most commonsensical for the guidelines to continue to add $7.00 per $100.00 of income for all combined monthly incomes in excess of $10,000.00. This would easily establish a formula for standardizing the support after the printed guidelines ended. This is however, exactly what the current comment to Rule 32 prohibits. (App. I).

In the present case, Petitioner was ordered to pay $2,988.00 per month for child support. If the guidelines in Rule 32 were projected forward using the $7.00 incremental increase per $100.00 incremental increase in income, Petitioner's child support award would have increased from the maximum printed amount by $700.00 based on his monthly income being $20,000.00. (App. G). Thus, Petitioner's total

child support payment should have been $2,242.00. This is an approximate 25% reduction in the actual child support amount ordered by the trial court. As a result, when extended over the payment term of 125 months, Petitioner will be taxed an additional $87,500.00 for child support based on the arbitrarily exercised discretion of the trial court whereas if the guidelines had been able to be considered this result would not have been reached.

Rule 32 is not inflexible in that is allows for deviation from the guidelines in special cases. This is sometimes utilized to address special needs and make appropriate awards accordingly. Even in the Petitioner's case, if the trial court felt there were special needs, which required an additional monetary award, the trial court could have ordered such. This is exactly what is done for those whose income falls within the guidelines. It should also apply for those outside the guidelines. However, in the present case, there is no finding of special needs on the record and no such additional award is warranted.

6. Even The Least Restrictive Rational Basis Scrutiny Can Not Save The Unconstitutional Application of Rule 32.

Petitioner understands this Honorable Court has traditionally refrained from involving itself in cases of statutory regulation of domestic relations. Sosna v. Iowa, 419 U.S. 393 (U.S. 1975). However, unlike Sosna, this case does not involve the right of the State to prescribe the conditions for marriage and the causes for which one may be dissolved. Id. This matter is about the arbitrary and capricious exclusion and discrimination against a distinct group of individuals when considered for child support while divorcing. Therefore, this matter is entirely proper for this Court.

The Equal Protection Clause of the U. S. Constitution provides a basis for challenging classifications that treat one group of persons as inferior or superior and for contending that general rules are being applied in an arbitrary or discriminatory manner. Jones v. Helms, 452 U.S. 412 (U.S. 1981). Moreover, the Equal Protection Clause establishes the fundamental principle that a State must govern impartially. . Jones (U.S. 1981), quoting New York City Transit Authority v. Beazer, 440 U.S. 568 (U.S. 1979). Thus, general rules that apply evenhandedly to all persons within the jurisdiction must unquestionably comply with this principle. Id.

In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights is subject to "rational basis" scrutiny. Thus, such a classification must be upheld against an equal protection challenge only if any reasonably conceivable state of facts could provide a rational basis for the classification. Federal Communications Commission and United States v. Beach Communications, Inc., 508 U.S. 307 (U.S. 1993).

In the present case, Petitioner was excluded from the consistent treatment of similarly situated individuals envisioned by the standard guidelines in Rule 32 and therefore excluded from this consistent treatment guaranteed therefrom. This exclusion was based solely on the fact that Petitioner's gross monthly income fell outside the uppermost limit of the printed guidelines in Rule 32. Rule 32 has created an economically disadvantaged class of individuals in those who have arbitrarily been excluded from the application of the guidelines in Rule 32. Thus, rather than being given the same protection as those similarly situated individuals whose incomes fall within the guidelines, the Petitioner was unconstitutionally subjected to the pure discretion of the trial court with no guidance or assistance from

Rule 32.

While this may seem harmless at first, it is in fact tremendously harmful when considering the economic impact inflicted on Petitioner and others as unfortunate as he. When reviewing other individuals similarly situated to Petitioner as shown supra, it is clear there is absolutely no way for trial courts all over the State of Alabama to provide for fair and consistent treatment of individuals who are unfortunate enough to have their monthly incomes which fall outside the printed guidelines. Each trial court's discretion is not the same and can not and will not conceivably reach the same result for all persons similarly situated throughout the entire State.

When the State of Alabama recognized the appropriateness of creating Rule 32 to guarantee equitable and consistent treatment of similarly situated persons in Alabama in child support awards, it should have provided for all its citizens rather than an arbitrarily selected number of them. There is absolutely no justifiable reason, rationally related or otherwise, for creating an arbitrary cut off of monthly income of $10,000.00 in the printed guidelines.

The trial court in its own Order stated that this circumstance presented by Rule 32 and the argument made by Petitioner of Rule 32's unconstitutionality was tenable, thereby recognizing and giving validity to the unconstitutionality of Rule 32's application. (App. F (5)). However, the trial ignored the unconstitutional application of Rule 32 and simply adhered to an established line of behavior created by the appellate courts in Alabama, no matter how wrong such behavior may be.

There is no governmental benefit, interest or justification anyone can assert to support such an action. If the Petitioner's case were to be decided in 10 different counties in Alabama, there would be 10 vastly different child support awards in each case. This is solely because his monthly income fell outside

the printed guideline amounts in Rule 32. However, if Petitioner's income fell inside the printed guidelines in Rule 32, 10 different counties would produce substantially the same result in the same 10 cases. For these varying situations there is no rational reasoning.

Further, it can not be said that such arbitrariness and capriciousness and the results therefrom can in any way be related to any legitimate state interest to withstand such a constitutional challenge as this. One may attempt to argue the needs of children of higher income families against the needs of children of those with lower incomes, however this is futile. No one can prove, or assert with a straight face, that the needs of a child with a combined monthly family income of $10,000.00 is any different than that of a child with a combined monthly family income of $10,100.00. However, under Rule 32, the latter would be subjected to a much different standard when being considered for child support. Such a distinction is purely arbitrary and capricious and renders nothing but inequitable and unconstitutional results.

One of the only possible reasons someone could assert is that it would be impossible to create a printed guideline for an infinite amount of monthly incomes. While this is an argument in favor of such an arbitrary cutoff, it is a hollow argument at most. Absolutely nothing would prevent the drafters of the guidelines from making a calculated formula to address standardizing guideline amounts for combined monthly incomes in excess of $10,000.00 in lieu of printing an actual table for an infinite number of incomes. Having such a formula to provide for the consistent treatment of those outside the guidelines just as those inside the guidelines enjoy is only just and practical and can no longer be ignored within the State of Alabama.

CONCLUSION

Rule 32 of the Alabama Rules of Judicial Administration is good and necessary in theory, but unconstitutional in practice. There is absolutely no justification or rationally related legitimate state interest in making such a disadvantaged class individuals by the creation of an arbitrary cutoff of monthly incomes considered in Rule 32. Rule 32 and its mandatory application in all child support cases in Alabama should make standardized guidelines for application to all individuals in Alabama, regardless of income.

In seeking the promulgation of Rule 32, the State of Alabama has undertaken a duty to create guidelines in the area of child support awards. When exercising such a duty where none previously existed, the State of Alabama must create a rule that treats all under it with impartiality. Thus, the guidelines in Rule 32 cannot be created in such a manner to apply in an arbitrary and discriminatory manner. However Rule 32, by its unfounded underinclusion; the arbitrary denial of protection to those with incomes outside the guidelines, is not evenhanded legislation that applies equally to all. It in fact creates a separate and distinct class of individuals who are unjustly disadvantaged by the application of Rule 32.

Once the State sought to act in the creation of Rule 32, it had a duty to ensure that all persons similarly situated would be treated the same by the application of the rule. However, due to the arbitrary and capricious exclusion of individuals whose combined incomes exceed $10,000.00 per month, Rule 32 is not applied fairly to guarantee equal treatment of all similarly situated individuals in child support awards. There is no justification for such action. In addition, there is no rationally related, legitimate state interest which can be asserted to make the arbitrary

and unconstitutional application as Rule 32 valid.

For all these foregoing reasons, Petitioner respectfully requests that this Honorable Court grant this Petition for Writ of Certiorari.

Respectfully submitted,

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